OCT 25 1979

IN THE

Supreme Court of the United States

October Term, 1979

No. 78-1851

JOSEPH S. HARRIS,

Petitioner,

v.

H. SCHULDT REEDEREI,

Respondent.

ON PETITION FOR CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION TO RECONSIDER DENIAL
OF PETITION FOR CERTIORARI

C. ARTHUR RUTTER, JR.
Breit, Rutter & Montagna
720 Atlantic National
Bank Bldg.
415 St. Paul's Blvd.
Norfolk, Virginia 23510

Attorney for Petitioner

October 24, 1979

TABLE OF CONTENTS

Page

Motion To Reconsider Denial of
Petition for Certiorari..... 1

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 78-1851

JOSEPH S. HARRIS,

Petitioner,

v.

H. SCHULDT REEDEREI,

Respondent.

ON PETITION FOR CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION TO RECONSIDER DENIAL
OF PETITION FOR CERTIORARI

Petitioner moves the Court to reconsider the decision of the Court to deny certiorari to the Court of Appeals for the Fourth Circuit and to reconsider and rule upon the Petition for Certiorari in conjunction with the Petitions for

Certiorari in the following three cases in which final judgments have been rendered by the Courts of Appeals and as to which Petitions for Certiorari have been filed in this Court:

> Mammoth Bulk Carrier, Ltd. v. Bachtel, No. 79-538 (cert. filed Oct. 1, 1979)
>
> De Los Santos v. Scindia Steam Navigation Co., Ltd., No. 79-512 (cert. filed Sept. 26, 1979)
>
> Matthews v. Ernst Russ Steamship Co., No. 79-624 (cert. filed Oct. 15, 1979)

These cases are all related to the instant matter in that all present the question of the standard of care to be applied to shipowners in negligence suits brought by longshoremen under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. Section 901 et seq.

The Court has pending before it a Petition for Certiorari in the cases of Mammoth Bulk Carriers, Ltd. v. Bachtel,

De Los Santos v. Scindia Steam Navigation Co., Ltd. and Matthews v. Ernst Russ Steamship Co. Thus this Court has before it at least one other, and probably three other cases which raise the same question as does the instant case. These other cases will present to the Court for resolution the standard of care applied by the respective Courts of Appeals in these longshoremen's negligence suits against shipowners under the post-1972 Longshoremen's Act. The De Los Santos, Bachtel, and Matthews cases present to this Court the standard applied by the Ninth and Seventh Circuits. The Harris case presents to this Court the standard applied by the Fourth Circuit, a standard which has also been applied by the Fifth Circuit. See Samuels v. Empresa Lineas Maritimas Argentinas, 573 F2d 884 (5th Cir. 1978).

It is clear that the standards

differ significantly. There is a distinct and significant difference in the standard of care applicable to a shipowner depending solely on which Court of Appeals' rule is being applied. This Court should resolve the conflicting standards by granting certiorari to the Harris case and the Bachtel, De Los Santos and Matthews cases, which petitions have already been filed.

A review of these three cases in conjunction with the Harris case reveals the significant differences in the applicable standard of care. The Court of Appeals for the Ninth Circuit in De Los Santos adopted as its standard of negligence for purposes of actions against shipowners under the Longshoremen's Act the following:

> "A vessel is subject to liability for injuries to longshoremen working on or near the vessel caused by conditions on the vessel if, but only if, the shipowner

> (a) knows of, or by the exercise of reasonable care would discover, the condition, and should realize that it involves an unreasonable risk of harm to such longshoremen, and
> (b) the shipowner fails to exercise reasonable care under the circumstances to protect the longshoremen against the danger." 598 F2d at 485.

The Ninth Circuit repeated the standard adopted in De Los Santos in its decision in Bachtel, affirming and applying the De Los Santos standard to the shipowner there. The Seventh Circuit Court of Appeals in Matthews applied the same standard of care which had been adopted by the Ninth Circuit in De Los Santos.

The standard of care applied by the Fourth Circuit Court of Appeals in Harris was that previously declared by the Fourth Circuit in Chavis v. Finnlines, Ltd., O/Y, 576 F2d 1072 (4th Cir. 1978) and Riddle v. Exxon Transportation Company, 563 F2d 1103 (4th Cir. 1977). The District Court in Riddle has given

the following instruction:

> "The shipowner has the duty to exercise reasonable care for an invitee, such as plaintiff Riddle here, who has come aboard the ship with the permission of the owner to do work and to warn of any latent or hidden dangers of which the shipowner knows or should know by the exercise of ordinary care of which are unknown to the plaintiff or to the plaintiff's employer."

The Fourth Circuit approved the instruction given by the District Court. Chavis, supra cited Riddle and reached the same conclusion.

The standard applied by the Fourth Circuit Court of Appeals and the standard approved by both the Ninth Circuit and the Seventh Circuit are mutually exclusive and irreconcilable. The result of these several decisions is that shipowners in some areas-those areas included in the Fourth Circuit and Fifth Circuit-operate under a standard of care far different from that which

shipowners in other circuits-the Ninth Circuit and Seventh Circuit-are governed by. Correspondingly, longshoremen, the individuals intended to be protected under the Longshoremen's and Harbor Workers' Compensation Act, are denied recovery for damages from third party shipowners under one standard of care but are permitted to recover such damages under the other standard of care. This conflict is clearly contrary to the intent of Congress. Congress clearly intended by its amendments in 1972 that the Longshoremen's Act be applied uniformly throughout the United States. The language of the Committee Reports is very clear. The Senate Report states:

> "Finally, the Committee does not intend that the negligence remedy authorized in the bill shall be applied differently in different ports depending on the law of this State in which the port may be located. The

> Committee intends that legal questions which may arise in actions brought under these provisions of the law shall be determined as a matter of Federal law."

This stated intention of the Congress has been frustrated by the creation and application of irreconcilable different standards of care by the various Courts of Appeal. This Honorable Court should act to create the uniformity intended by Congress and necessary for the efficient and proper conduct of maritime commerce.

The Harris case, in conjunction with the Bachtel case in which a Petition for Certiorari has already been filed, present to this Court an immediate opportunity to resolve the conflict among the various Courts of Appeals and to create the uniform application intended by Congress.

Accordingly it is respectfully

submitted that this Court should reconsider its decision to deny certiorari in the Harris case and should reconsider its decision in conjunction with the Petitions for Certiorari already filed in Bachtel, De Los Santos and Matthews.

RESPECTFULLY SUBMITTED,

C. ARTHUR RUTTER, JR.
Attorney for Petitioner

October 24, 1979

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion were mailed, postage prepaid, to Charles R. Dalton, Jr., Esquire, Seawell, McCoy, Dalton, Hughes, Gore & Timms, 936 Wainwright Bldg., Norfolk, Virginia 23510, Attorney for the respondent, this 24th day of October, 1979.

I also certify that, in accordance with Rule 58 of the Supreme Court Rules, this Petition is presented in good faith and not for purposes of delay.

C. ARTHUR RUTTER, JR.
Attorney for
Petitioner